



## **CITY OF HAYWARD**

### **AGENDA REPORT**

AGENDA DATE 06/04/02

AGENDA ITEM 9

WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** City Manager

**SUBJECT:** Agreement with Nixon Peabody To Evaluate Options for Formation of an Electric Utility Owned by the City

#### **RECOMMENDATION:**

It is recommended that the City Council adopt the attached resolution authorizing the City Manager to execute a contract with Nixon Peabody to assist the City in evaluating options for forming an electric utility owned by the City, and appropriating funds for this purpose.

#### **BACKGROUND:**

Last year, as part of the deliberations on the Russell City Energy Center, the Council expressed interest in exploring the formation of a mechanism that would enable the City to be engaged in the business of providing electricity to residents and businesses in Hayward. Last December, the City Council authorized staff to issue a Request for Proposals (RFP) to retain a consultant to assist the City in more fully analyzing the legal, engineering, and economic feasibility of forming an electric utility.

The RFP was sent to twenty-three individuals and/or firms that specialize in this type of analysis. In response the City received nine proposals. From these nine proposals, four firms were interviewed and based on these interviews staff is recommending the firm of Nixon Peabody.

Nixon Peabody is a law firm that has had a significant legal practice in energy regulatory matters, and for the purposes of this proposal has assembled a team with two other firms including Barakat Consulting, Inc. to provide the economic analysis, and Chevron Energy Solutions to provide the engineering analysis.

Under its proposal, Nixon Peabody will provide both the overall project management as well as the regulatory analysis that will be required by the project. These services will be provided by Howard Golub, a partner with Nixon Peabody, who has had over thirty years experience in the energy industry. During this time, he spent 22 years with Pacific Gas and Electric Company including seven years as Vice President and General Counsel.

Likewise, the individuals with Barakat Consulting who will perform the economic analysis and the individuals with Chevron Energy Solutions who will perform the engineering analysis also have extensive experience in their respective areas of expertise.

## Feasibility Study

As envisioned under the Request for Proposals, this project would be divided into two principal phases. Phase I would include an analysis of recent energy industry trends, an evaluation of the current legal regulatory climate, a summary of the actions taken or being considered by other public agencies, and a preliminary economic and engineering analysis to identify the feasibility of various options that may be available to the City relative to providing electric power to its businesses and residents. If the results of Phase I indicate that feasible opportunities do exist, and if the City Council chooses to go forward, then Phase II of the study would be undertaken. This phase would provide an in-depth analysis of the chosen option(s) along with the preparation of a detailed business plan(s). The scope and extent of Phase II would be determined and negotiated at the time that Phase I is completed. The City would also be agreeing to make a decision on whether or not to proceed with Phase II within ninety days of completing Phase I.

The Request for Proposals asked respondents to provide a bid for Phase I on a “not to exceed” basis, and an estimate of the costs for Phase II. The City received bids for Phase I ranging from approximately \$25,000 to \$100,000. The cost for Phase II, whose scope would be dependent in large part on the results of Phase I, was estimated by respondents to be in the range from approximately \$100,000 to \$300,000.

The fee proposal received from the Nixon Peabody team for Phase I is for an amount not to exceed \$55,000. The Nixon Peabody cost estimates for Phase II are in the ranges discussed above.

The scope of work for this contract would include the following tasks:

1. Provide a background analysis of recent industry trends and legislation and their impact on the City of Hayward’s ability to generate and/or distribute electricity from a regulatory, engineering, financial, and economic perspective.
2. Provide a background analysis of actions taken or currently being considered by other public agencies comparable to the actions and objectives being considered by the City of Hayward.
3. Identify market potential for the creation of a municipal electric distribution system from the perspective of the sufficiency of the existing and/or future customer base. Key considerations would be the identification of potential residential, commercial, and industrial customers, power supply and reliability, engineering feasibility, and opportunities that may be unique to Hayward such as might present themselves, but not dependent on the construction of the Russell City Energy Center.

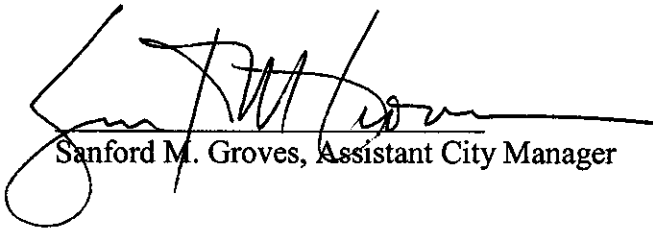
4. Prepare a qualitative analysis of the feasibility for the City to invest in power generation and/or to create new power supply facilities from the perspective of market, engineering, and economic feasibility.

The immediate objective of the above tasks will be to provide to the City of Hayward sufficient information on whether or not to proceed to Phase II of this study. As stated above, Phase II would provide the City with an in-depth analysis of the regulatory, engineering, and economic feasibility along with a detailed business plan for one or more alternatives as may be suggested by the Phase I results.

A copy of the Nixon Peabody proposal along with a proposed contract for services is on file with the City Clerk.

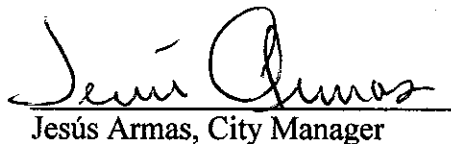
If approved, it is anticipated that Nixon Peabody would begin the Phase I work within thirty days and complete it within ninety days.

Prepared by:



Sanford M. Groves, Assistant City Manager

Recommended and Approved by:



Jesús Armas, City Manager

Attachment: Resolution

# DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

**RESOLUTION AWARDING CONTRACT TO NIXON  
PEABODY FOR FEASIBILITY ANALYSIS OF OPTIONS IN  
CONNECTION WITH THE POSSIBLE FORMATION OF AN  
ELECTRIC UTILITY OWNED BY THE CITY, AND  
AMENDING BUDGET RESOLUTION NO. 01-095  
RELATING TO AN APPROPRIATION OF FUNDS FOR THE  
CONTRACT**

WHEREAS, in December 2001, the City Council approved the RFP to retain a consultant to assist the City in more fully analyzing the legal, engineering, and economic feasibility of forming and electric utility; and

WHEREAS, the RFP was sent to twenty-three individuals and/or firms and in response the City received 9 proposals. Four of the 9 firms were asked to interview and based on the interviews staff recommends the firm of Nixon Peabody.

NOW, THEREFORE, BE IT RESOLVED that Nixon Peabody is hereby awarded the contract to assist the City in evaluating its options to form an electric utility owned by the City, and that the City Manager is hereby authorized and directed to execute an agreement for the award of the contract on behalf of the City of Hayward, in an amount not to exceed \$55,000 in a form to be approved by the City Attorney.

BE IT FURTHER RESOLVED that Resolution No. 01-095, as amended the Budget Resolution for fiscal year 2001-02 is hereby further amended by appropriating \$55,000 from the undesignated General Fund balance to fund the contract.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2002

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward